

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Ways To Further Section 257 Mandate)	MB Docket No. 04-228
And To Build on Earlier Studies)	

To: The Secretary, for forwarding to Chief, Media Bureau

COMMENTS OF
THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association (“CBA”) hereby submits its Comments in response to the Commission’s Public Notice, DA 04-1690, released June 15, 2004, soliciting input on ways to further the Commission’s Section 257 mandate to identify and eliminate market entry barriers for small telecommunications businesses and the Section 309(j) mandate to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by minorities and women.¹ CBA is the trade association of the nation’s Class A and Low Power Television (“LPTV”) stations, which now number more than 2,700 stations (609 Class A stations and 2,128 LPTV stations).²

¹ On Sept. 8, 2004, the FCC Media Bureau (“Media Bureau”) granted the motion for further extension of time filed by the Minority Media and Telecommunications Council and it extended the comment deadline to Oct. 12, 2004 and the reply comment deadline to Nov. 8, 2004. (See *Public Notice*, DA 04-2906). The Media Bureau initially granted a similar motion for extension of time on July 12, 2004. (See *Public Notice*, DA 04-2085).

² See *Broadcast Station Totals as of June 30, 2004*, Federal Communications Commission, News Release, August 20, 2004.

2. It is very clear that the Class A and LPTV industries have the greatest ownership of any mass medium by members of minority groups, women, and small businesses, as well as significant day-to-day management and operation undertaken personally by station owners. It is also well known that these stations, which must provide specialized niche programming to survive in the face of large competitors and a lack of mandatory cable and broadcast satellite carriage rights, in practice provide a diversity of programming that is not available in the full power television industry. Therefore, increasing opportunities for Class A station development is virtually certain to increase minority, female, and small business ownership, and to provide more diverse programming services to the public.

3. However, there are several obstacles in the Commission's regulatory scheme that inhibit the growth and development of Class A and LPTV stations. The good news is that many of these obstacles are not difficult for the Commission to remedy. They include:

a. Infrequency of application filing windows for new LPTV stations and major changes. The most recent window was four years ago.

b. Lack of an open window for LPTV stations to apply for Class A eligibility. There is nothing in 47 U.S.C. § 336(f)(1) that prevents the Commission from opening such a Class A eligibility window. In fact, the Commission has this authority pursuant to its general powers under the Communications Act.

c. Current blanket freeze on Class A and LPTV station displacement and coverage change applications, recently initiated by the Media Bureau in DA 04-2446, is very constraining on the Class A/LPTV industry. These stations should be able to make adjustments to their business plans if they can effectively demonstrate to the Commission that there will be no impact on DTV allotments. The freeze harms these small businesses

because they are not able to react to the ebb and flow of the market, which does not necessarily “freeze” when the Commission decides it will not accept such applications.

d. Harmful interpretation of the Communications Act, so as not to require cable television systems to accept alternative delivery systems by Class A and LPTV stations with must-carry rights where, as a result, the delivery systems do not place a sufficiently strong over-the-air signal over the cable company’s headend.³ It is fundamentally unfair for the Commission to allow a cable system to avoid its must carry obligation by not requiring the cable system to accept such an alternative delivery system in a must carry scenario.

e. Failure to act for more than three years on RM-10335, a petition for rule making to allow Class A and LPTV stations to take advantage of the network and syndicated exclusivity rules. For example, the CBS affiliate in Lima, Ohio, belongs to a LPTV station. That station is not carried on its local cable system because the cable company imports two “distant” CBS affiliates. Even though CBS has already granted exclusivity rights to its Lima affiliate, this LPTV station is not authorized under federal law to prevent the cable system from importing the same programming from distant stations. This untenable situation interferes with the proper legal operation of private contracts, whereby commercially negotiated programming rights are, and should be, owned, bought, and sold as the private parties choose.

³ This problem is becoming increasingly serious as cable systems continue the practice of consolidating headends. A headend may be located tens of miles or even a hundred or more miles away from the community it serves. See *In the Matter of Complaint of Washburn University Topeka against Kansas City Cable Partners d/b/a Time Warner Cable Must Carry Complaint*, 14 FCC Rcd 9323 at 9324 (1999), where the Commission denied a cable must carry complaint filed by a non-commercial television station after the cable system relocated its principal headend approximately 30 miles away.

f. While only Congress can authorize “must-carry” rights for these stations, CBA hopes the Commission would encourage Congress to correct the policy anomaly that says that only stations with a statutory local programming obligation are not eligible for local cable carriage. In the meantime, many small business owners in the Class A and LPTV industry continue to operate at a vast competitive disadvantage without mandatory cable and/or satellite carriage.

4. On a positive note, CBA is pleased that the Commission recently adopted rules in MB Docket No. 03-185 for the transition to digital broadcasting by Class A and LPTV stations. Full power TV stations have already had several years in order to plan for and implement actions necessary for the transition and it was time for the Commission to address the transition for Class A and LPTV stations. CBA believes the Commission has done an excellent job in establishing the regulatory framework for Class A and LPTV television stations to move to digital service by allowing the optional use of a second channel for digital operation, which follows a similar path as full power stations. As the transition is completed, however, it is important that all digital LPTV licenses become permanent. Thus, CBA’s members are dedicated to protect our communities from disruptive loss of services of the highly local and specialized programming that our stations provide that are not available from other media sources. CBA is also pleased that the Commission has not set a fixed date to complete this transition since the unique communities we service could be hurt by a fixed, arbitrary date to cease analog broadcasts. CBA’s members look forward to moving the DTV transition quickly forward, but without hurting the communities we are licensed to serve.

5. The Commission often mentions Low Power FM stations as a way to increase localism and diversity, but it hardly ever mentions Class A or LPTV stations to make this point.⁴ While Low Power FM stations are noncommercial outlets, Class A and LPTV stations are mostly commercial enterprises and they fulfill all aspects of the Section 257/Section 309(j) mandates, including promotion of small business participation in media ownership and programming. The proof is in the results.

6. Theoretical studies may be useful, but Class A and LPTV stations are here today and in fact represent fulfillment of all of the Section 257/Section 309(j) objectives. It is very likely that if the Commission provided more encouragement to Class A and LPTV stations, the Commission would realize even more localism and diversity from these stations. The Commission may wish to undertake academic studies to guide policy in the future; but meanwhile, it should move down a proven path and remove regulatory barriers to the growth and development of the Class A and LPTV services.

⁴ In the recent Order setting forth the digital transition rules for Class A and LPTV stations, however, the Commission recognized the positive value of these stations, “In many communities, viewers uniquely depend on Class A TV and LPTV stations as their source of local news, weather and public affairs programming. We agree with Zenith that ‘Class A and LPTV stations are integral components of our national system of television stations.’ We believe these stations should and will play a significant role in the nation’s digital television broadcast system.” See *Amendment of Parts 73 and 74 of the Commission’s Rules To Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Report and Order, FCC 04-220 at para. 52, MB Docket No. 03-185 (rel. Sept. 30, 2004).

Respectfully submitted,

/s/

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⁵ Admitted in Maryland; Not in D.C.